

ACSJC Background Paper: Are We Welcoming the Stranger?

I. THE GLOBAL PICTURE

Over the last thirty years, we have seen some of the largest movements around the world of people in history. People are moving for many reasons and their movement can be for a short period or permanently. Their movement may be voluntary or involuntary: - push and pull factors and peoples' own perceptions play a significant role in determining whether to move or not. Push factors are those reasons that force people to leave their country such as war and oppression. Pull factors are those that attract people to another country such as protection of rights, work possibilities.

In Australia, there has been much publicity about immigration, refugees and asylum seekers. Often the debate is ill informed and driven by intolerance and fear. This publication hopes to provide some perspective to these public debates and to promote views that respect the dignity and rights of all peoples.



The Australian Catholic Social Justice Council thanks Kerry Murphy for writing this Background Paper.

1. Movement of people around the world

There are a number of reasons why people move, some reasons can be overlapping or it may be for one reason. Some of the more common reasons for movement of people, whether temporary or permanent, are discussed here but the list is not intended to be exclusive.

a) Culturally determined movements (coming of age ceremonies).

These used to be very culturally significant in many communities but are now in a decline in contemporary lifestyles. It is common for many indigenous peoples to travel for cultural ceremonies as part of their traditional movements. This is still the practice in many indigenous communities in Australia. With an increased economic and industrial development, these traditional movements become harder for the traditional communities to continue. A number of people have almost ceased such cultural movement due to economic reasons. This is the case for many Bedouin, who formerly lead a nomadic lifestyle but who now have become workers in oil industry in the Middle East. Freedom of such movement can also be restricted by stricter controls of international boundaries where previously borders were non-existent or porous.

b) Pilgrimage

The movement of people as part of their religious practice has always been a feature of the movement of people. The most common movements today are featured in the major world religions. In Islam, the Haj to Mecca, is a goal of every Moslem. A number of other towns in Middle Eastern countries such as Iraq and Iran have shrines important to different groups of Moslems from the Sunni or the Shi'a or other Islamic communities.

Christians of all denominations travel to Jerusalem, especially during the Easter and Christmas periods. In the Catholic tradition, there are a number of pilgrimage sites such as Canterbury and Compostella in the middle ages. Lourdes and Fatima are popular pilgrimage destinations in modern times.

Jerusalem is a place of pilgrimage for Jewish, Christian and Islamic people.

In the Hindu tradition, there is a large movement of people to sacred places for Hindus along the River Ganges such as the Kumbh Mela every 12 years or to special cities like Varanasi.

c) Ecological and environmental movements

The movement of people due to ecological reasons is increasingly due to desertification and ecological disasters. The increasing size of the Sahara and therefore land not available for cultivation has caused many people to move in Africa. People are moving due to drought, plagues, floods, earthquakes, volcanic activity and other results due to the forces of nature. Many of these ecological movements are involuntary but people fleeing these movements will not be refugees under the UN definition.

A man made ecological problem is that of landmines. Whilst many countries now agree to the international ban on landmines, the planet is lettered with an estimated 100 million landmines. These evil devices are more designed to maim than to kill and thousands of children and older people have lost limbs due to falling victim to landmines, which render large areas unsafe for people to live in or to use for agricultural purposes.

d) Involuntary movements

The most commonly known involuntary movements are by refugees. There are also significant number of internally displaced people who were forced to move from their homes but are still in their own country. These people move because of war, or political or religious oppression and they are moving to protect their lives and the lives of their families. Involuntary movements may also be due to environmental or ecological reasons. Other movements can be due to forced resettlement of populations such as occurs with building dams and has occurred in India and the Peoples Republic of China.

e) Voluntary migration

Developed countries encourage this form of international movement for their own economic development. This was a feature of Australian Immigration in the 1950s and 1960s as well as many western European countries such as Germany until recently. Australia, Canada and the USA are some of the few countries which still maintain an immigration program for skilled migrants. At the same time, the developed countries have established are strong immigration controls to prevent large scale movement of people seeking employment or economic betterment. Globalisation only applies to the free movement of money, not of people.

f) Tourism

Millions of people travel the world at any time for pleasure and tourism. Australia receives around 2 million visitors every year. Most are from developed countries in Europe, North America and Japan.

g) Study

There is a long tradition of people moving in order to study. This continues through many countries and Australia has encouraged students from many countries to study here as part of the promotion of Australian educational institutions.

h) Business and for work

The movement of people for business has a long history with traders establishing trade routes all over the world to promote the supply of goods. Short-term appointments in executive or specialist professional roles is a more modern development and is common throughout many countries due to globalisation of economies. Other people may work outside their home countries for short times for many reasons. These could be for the experience, career development, as part of a holiday or travel, for religious reasons as missionaries or in international development programs. 'Guest workers' were more common in the 1950s and 1960s in western European countries such as Germany but may re-emerge with the declining and aging of populations in developed countries.

2. Presumption of the principle of sovereignty

The presumption of sovereignty is that every country or International State has the sovereign right to determine who can and who cannot reside in that country. It is understandable that there may be cultural, religious, social or environmental reasons for restricting movement of people. However, it is important that these be balanced by consideration of human rights issues, humanitarian responses, sustainable development and the respect for the dignity of people. This sovereignty presumption often fails to balance these matters and so developed countries increasingly use the presumption of sovereignty in order to establish stricter immigration controls through a variety of means. These include:

- Visa requirements,
- carrier sanctions,
- detention of illegal immigrations,
- deportation.

These all feature in Australian law. Human rights advocates argue that there can often be a conflict between human rights principles and the bare principle of sovereignty.

3. Types of migration controls

There are a number of ways in which nations control the movement of people within the nation, into a nation and from the nation.

a) Negative controls

Preventing the movement of people requires establishing barriers, creating deterrence, or through benign neglect. The People's Republic of China (PRC) has restrictions about the movement of people around China. Parts of China are established as special economic zones, such as Hong Kong, and they restrict the movement of people into these regions.

This control may fail on logistical grounds as it does not address the causes of migration. Even the significant restrictions in Chinese society have failed to prevent large numbers of people moving from country areas into the cities.

b) Accommodative controls

This provides a focus on improving the welfare of a migrant population. This can be achieved through minimum wage legislation, working regulations and conditions. This will target the urban poor rather than migrants solely. It deals with symptoms of movement of people rather than causes of their movement.

c) manipulative controls

Manipulative controls focus on changing the pattern of population movement to spread the benefits more widely. Freedom of movement is maintained but a government seeks to influence the choice of places to where people move. This is achieved through the building of new towns (as occurred in Brazil, Pakistan, Venezuela), This is also achieved through the decentralization of industry and the promotion of satellite towns. This has been done in Australia through towns such as Albury Wodonga.

d) Preventative controls

These develop policies for causes of migration to deal with poverty, inequality, unemployment, and land reform. Aims at long-term solutions. Such policies have various problems: policy makers are insufficiently aware of the full range of factors which influence migration decisions, these are a focus on single variable solutions, the policy makers emphasize industrial or other development in the hope this will curtail movement of people.

4. International Human Rights Law

Refugee law is part of International Human Rights Law. There are many Human Rights Conventions and the main ones applicable to interpreting refugee law and to which Australia is a signatory are:

- *Universal Declaration of Human Rights*
- *UN Convention and 1967 Protocol relating to the Status of Refugees*
- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights*
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *The Declaration of the Rights of Child*
- *The International Convention on the Elimination of All Forms of Racial Discrimination*

These Conventions and Treaties are part of what is known as human rights law. It is against this background that human rights violations and persecution can be measured.

II. WHO ARE REFUGEES?

1. Definition

Refugees are people who are forced from their country due to fear of suffering human rights abuses and persecution. Throughout history, there have been many stories of refugees fleeing war and persecution. The definition of refugee used today developed from the horrific experiences of people during the Second World War (1939-1945). In the aftermath of that war, millions of people were homeless or living in camps across Europe.

Shortly after the establishment of the United Nations was the promulgation of the Universal Declaration of Human Rights. This is one of the principle documents for the development of modern human rights law of which refugee law is a part. The modern definition of refugee reflected the concerns of States to protect civil and political rights of people as well as a recognition of the need to protect people from persecution due to their race or religion.

Refugee law is the way the international community protects people who are at risk of persecution in their home country. The principle of sovereignty requires every country to care for its own citizens, however this clearly does not occur in many countries.

The definition of refugee used in Australia is found in the 1951 Convention and 1967 Protocol. The 1951 Convention limits refugees to events occurring in Europe before 1951. The 1967 protocol removes that geographic and time limitation. This means that refugees can come from any country in the world due to events occurring today.

The definition is found in the 1951 UN Convention and 1967 Protocol relating to the Status of Refugees.

"A refugee is someone who 'owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.'"

This means that there is no such person as an economic refugee or environmental refugee. Also, a refugee must be outside their country of origin to be eligible for refugee protection. People inside a country and still suffering human rights abuses are generally known as internally displaced people. The internally displaced are not protected by international law

A person who is applying to be granted refugee status is called 'an asylum seeker'. An asylum seeker may be in a country lawfully or unlawfully, but according to the United Nations High Commissioner for Refugees (UNHCR), that should not affect the way their case is assessed or the treatment they receive.

2. The UNHCR

The UN established the United Nations High Commissioner for Refugees (UNHCR) as the international body with the mandate of refugee protection. The UNHCR estimates that there are over 20 million people of concern in the world in need of protection.

Table 1: UNHCR persons of Concern to end 1999

Region	Refugees	Asylum-seekers		Others of concern	Total
AFRICA TOTAL	3,523,250	61,110		1,716,180	6,250,540
ASIA TOTAL	4,781,750	24,750		2,502,360	7,308,860
EUROPE TOTAL	2,608,380	473,060		4,204,360	7,285,800
CENTRAL AMERICA	52,830	110		26,230	79,170
SOUTH AMERICA	6,910	1,380		1,230	9,520
NORTH AMERICA	636,300	605,630			1,241,930
OCEANIA	64,500	15,540			80040
TOTAL	11,675,660	1,181,600	8,062,570	22,257,730	

(Statistics from UNHCR)

3. Refugee solutions

There are generally seen to be three solutions for people who find themselves to be refugees. The first is repatriation when the conditions in their home country are safe. The second is local integration into the community to where they fled. Such a solution will depend upon the capacity of the host country in receiving and resettling refugees. The third solution is resettlement in a third country. This solution is limited by the willingness of the rich developed countries accepting refugees for resettlement.

As most refugees are living in the poor countries of the world, then these countries have little ability to accept many new people.

It is common for developed countries to have quotas of refugees they will accept for resettlement. This enables the establishment of programs for resettlement and language training often needed for resettling refugees.

Australia will resettle 4,000 refugees in the year 2000/2001. They come from a variety of countries but the largest group is from Europe.

Table 2: Humanitarian Program (Offshore) since 1996-97, by Region

Region	Actual level	Actual level	Actual level	Actual level	Allocations 2000-01
	1996 -97	1997 -98	1998 - 99	1999-2000	
Africa	1 240	1 473	1 552	1 736	1 970
Americas	82	50	24	21	0
Asia	1 669	685	295	113	300
Europe	4 236	5 307	4 736	3 424	3 360
Middle East &					
South-West Asia	2 425	2 952	2 919	2 208	2 300
Unallocated	-	-	-	0	70
TOTAL	9 652	10 467	9 526	7 502	8 000

(Source Department of Immigration and Multicultural Affairs, DIMA)

Australia also resettles people who do not fit the strict definition of refugee. These people come under the 'humanitarian' visa classes and may include dependent spouses or children for resettled refugees as well as people in special need of resettlement.

Table 3: Humanitarian Program Outcomes since 1996-97, by Categories

Category	1996-97	1997-98	1998-99	1999-2000
Refugee	3 334	4 010	3 988	3 802
Special Humanitarian	2 583	4 636	4 348	3 051
Special Assistance (1)	3 735	1 821	1 190	649
Onshore refugee (2)	2 251	1 588	1 834	2 458
Total program	11 903	12 055	11 360	9 960

(1) The 'special assistance category' applied to people from selected countries who the Government perceived to be at special need of resettlement on humanitarian grounds and because of a connection to Australia. These people were not just refugees, but included internally displaced people from Sri Lanka, Cambodia, Sudan, East Timor, Former Yugoslavia, Burma and the Ahmadi from Pakistan.

(2) 'Onshore refugees' are people who are granted refugee status in Australia after making an application in Australia.

4. The 1951 Convention and the Rights of Refugees

The rights of refugees are set out in the 1951 Convention and 1967 Protocol. It sets out the definition of a refugee as well as the obligations to refugee of countries which have signed the Convention.

The most important right a refugee has is the right not to be returned to a country where they may be persecuted. This is called the prohibition of expulsion, or the *non-refoulement* principle. This enshrines the basic protection of refugees from the risk of future persecution.

Other refugee rights are similar to the rights of citizens in a liberal democracy:

- Non-discrimination (article 3)
- Freedom of religion (article 4)
- Right to acquire property, real estate or personal property (article 13)
- Equal protection for intellectual property and artistic rights (article 14)
- Right to for non-profit associations (article 15)
- Equal access to courts of law (article 16)
- Right to work (article 17)
- Right to Housing (article 21)
- Equal access to public education (article 22)
- Equal access to public relief and assistance (article 23)
- Right of freedom of movement within a country of asylum (article 26)
- No penalty for illegal entry (article 31)

These rights are essentially respected in Australia. However, there are some areas where refugees are treated differently depending on how they came to Australia. Australia has a mandatory detention policy for all people arriving without a valid visa.

Human rights advocates believe this treatment is contrary to article 31 of the UN Convention, because refugees who arrive without a visa, such as 'boat people', are given less rights than other refugees in Australia.

III. ASYLUM SEEKERS AND REFUGEES IN AUSTRALIA

1. Background to Refugees Arriving in Australia

Australia has a good record in resettling refugees in the last half century. Nearly 600,000 refugees and displaced people have resettled in Australia since the end of the Second World War in 1945. These refugees came to Australia from all over the world and most have made Australia their home.

One of the first refugee resettlements occurred before the Second World War. A group of 7,500 Jewish refugees were resettled in Australia in 1938-1939. Australia was to accept a further 7,500 however they could not get away due to the outbreak of war. This was part of an international settlement initiated by President Roosevelt of the USA to help

Jewish people in areas under control by the Nazi government in Germany.

After the Second World War, Australia resettled an estimated 170,000 people from the displaced persons' camps in Europe. The next significant resettlement of refugees was after the failed anti-communist Hungarian rising in 1956. In 1956-1957, Australia accepted about 14,000 Hungarian refugees. The third major refugee movement were Czech refugees after the crushing of the 'Prague Spring' by the Soviet Union in 1968. Australia accepted about 5,000 Czech refugees. Other refugees were resettled in Australia on an *ad hoc* basis as there was no formal program for refugee resettlement at that time.

After the expulsion of Asians from Uganda by Idi Amin in 1972, Australia accepted only about 200 people as there was still some hangover of the White Australia Policy. Some Chilean refugees were resettled in 1973 after the coup by General Pinochet. It was with the fall of Saigon and the end of the Vietnam War in April 1975 that the policies regarding refugee resettlement started to change dramatically in Australia.

Initially, the Labor government was reluctant to assist refugee resettlement from Vietnam, however this policy was eventually changed as the large numbers of people escaping Vietnam required international solutions. In April 1976, a small boat arrived in Darwin with Indochinese refugees aboard. The boats continued to arrive and by 1979, 2011 refugees had come to Australia by boat. Most were approved under the new refugees processing system established by the Fraser government. Most refugees from Vietnam were not who had sailed to Australia but were resettled from camps in South East Asia. Between 1975 and 1995, over 189,500 refugees from Vietnam, Cambodia and Laos were resettled in Australia.

Australia continues a policy of accepted and resettling refugees and humanitarian cases. However, the response to onshore asylum seekers has hardened considerably over the last decade.

2. Onshore Applications for Refugee Status

Successive Australian governments have created obstacles for asylum seekers to make refugee applications in Australia. The stated reason is to limit and target perceived 'abuse' of the process. However, the effects of the various sanctions affect genuine and unfounded applications alike and are overly punitive. This is like the teacher who punishes the whole class because someone talked. Historically, the desire of Australian Governments has been to make selection of refugees when the refugee is still overseas. This provides more certainty for the Government planners as well as keeping applicants away from the review systems for onshore applications. The 'control' model of immigration has been fundamental to Australian policy. Such an approach is common throughout the richer countries of the world in Europe and North America.

It is easier for governments to manage resettlement of refugees from camps with refugee populations in countries of first asylum. Governments across Europe and North America have set up hurdles for asylum seekers and sought to limit the number of asylum applications from people who arrive within a country. The concept of first asylum is where a country provides temporary refuge whilst an asylum seeker has their application determined according to law. The concept is one developed countries like Australia are trying to limit to developing countries.

3. Exclusion from Making an Application

Not every asylum seeker who arrives in Australia can make a refugee application. The *Migration Act 1958* and *Regulations* seek to exclude certain people from making refugee applications in Australia. Those effectively excluded from making applications include:

- Certain persons covered by the Comprehensive Plan of Action (CPA)
- Persons covered by 'Safe Third Country' provisions
- Persons with Temporary Safe Haven visas
- Persons with access to protection from safe third countries

The CPA was an agreement to help resettle Indochinese refugees from camps in South East Asia to developed countries such as the USA, Australia, Canada, New Zealand and France.

'Safe third country' provisions are those where a government unilaterally declares another country to be 'safe' and therefore it is not possible for a person to be a refugee from that country. Australia has reached such an agreement with the People's Republic of China regarding Sino-Vietnamese who were resettled in the PRC from Vietnam in the early 1980s.

The 'Temporary safe haven' visa was created for people from Kosovo and east Timor to provide temporary sanctuary in Australia whilst the situation in their home country calmed down.

4. Current Process for Refugee Applications in Australia

The asylum process in Australia is a two-stage process. The initial application is assessed by an officer of the Department of Immigration and Multicultural Affairs (DIMA). Unsuccessful applicants can appeal to the Refugee Review Tribunal (RRT). The RRT is funded by DIMA and appointments to the RRT are approved by the Minister for Immigration however the RRT is administratively and legally separated from DIMA and the Minister. Judicial review in the Federal Court or the High Court is available after merits review by the RRT but the grounds of review are very limited.

Asylum seekers make an application to a Migration Officer and the application must be on the correct form. The form must be completed in English and all attachments must be also in English or with English translations.

The Government has provided a small fund to provide 'application assistance'. There is no longer any legal aid available to assist applicants for refugee status. The limited amount of application assistance does not stretch to all the needy claimants. This leaves some asylum seekers in the difficult position of completing the form themselves, or paying a lawyer or migration agent to help them. People in detention have access to representation funded by DIMA but can choose a private lawyer or migration agent if they wish.

Australia receives a relatively small number of applications for asylum compared to developed countries in North America and Europe.

Table: 4 Proportion of applications for asylum per receiving region (1997):

Region	Percentage of asylum claims
Europe	62.69%
North America	20.16%
Latin America	0.29%
Oceania	2.04%
Africa	9.25%
Asia	5.57%

(Statistics from Refugee Council of Australia - RCOA)

The total number of applications submitted was 532,670

Table 5: Number of applications in comparative countries:

Country	1997	1998	1999
Australia		8,257	12,713
Canada	24,300	24,937	30,124
UK	32,500	46,020	71,160
USA	84,800	54,952	41,377
Sweden	9,700	12,844	11,231

5. Two Types of Refugees

On 20 October 1999, the Federal Government amended the law to create 2 types of refugee applicants. Both are 'refugees' according to international law.

The first class of applicants who are 'not immigration cleared' applies for the 785 temporary protection visa. These are people who did not have a visa when they arrived in Australia or their visa was cancelled at the point of entry. They must be held in detention pending the decision in their application. From 1 November 2000, a further change was made which meant that people arriving on false passports or on false visas could only apply for the 785 subclass, even though they were immigration cleared.

The subclass 785 visa only entitles refugees to:

- a 3 year residence visa;
- no right to sponsor immediate dependent family members (spouse and dependent children);
- no right of return to Australia if they leave, and
- only allowed to apply for the permanent protection visa

The 866 subclass visa will only be granted 30 months after the grant of the subclass 785 visa. These refugees have permission to work but no access to English language classes, not the full range of social security, no support from

Migrant centres and workers must pay overseas student rates for study.

'Immigration cleared' cases who are successful are granted the subclass 866 visa and permanent residence which entitles them to English classes, full social security benefits, right to sponsor immediate family, settlement support services.

There is no logic in this separation and it is deliberately punishing people for arriving on boats or in planes 'illegally'. It creates a refugee underclass, which will be a social problem for years to come. The Coalition Government and Labor opposition supports this policy.

These changes were supported by those claiming that 'boat people' were 'queue jumpers' and that somehow the 'real refugees' were missing out. Such arguments do not work when discussing human rights. Protecting human rights is not like standing in the bus queue or the check out aisle in the grocery store. Refugees do not flee in an orderly manner. The very nature of refugee flight and seeking asylum is impossible to describe in terms of queues or order. Such arguments as proposed by those calling asylum seekers 'queue jumpers' fail to recognise the real fear and danger in which refugees find themselves.

6. Detention Cases

A number of asylum seekers are in immigration detention. They are often not 'immigration cleared' as they did not have a passport or valid visa when they arrived in Australia. The main detention centres are in Sydney (Villawood), Melbourne (Maribyrnong), Perth, Curtin and Port Hedland in Western Australia and Woomera in South Australia. The Government stated its plans in the last budget to close Curtin and open two new centres in Brisbane and Darwin.

Applicants in detention are from two main groups. The first are what are termed 'unauthorised' arrivals' or those people who arrive in Australia without a visa. Australia maintains a strict visa regime for all non citizens and it is the responsibility of carriers usually the airline staff, to check that someone has a valid visa for Australia before they board a flight.

Airlines or ships, which bring in people without valid visas face penalties known as carrier sanctions. Such persons can be 'turned around' by sending them back to the place from where their flight departed. Only people who can somehow convince the immigration officer that they are a potential refugee will be allowed in to make an application for refugee status. This is the initial process of screening. There is no right to receive reasons for being screened in or out and there is no merits review. It is possible to delay or prevent a deportation through an injunction granted by a Federal Court judge.

People who arrive by boat, commonly referred to as 'boat people' are in the same position as people arriving by plane without a visa.

If the 'unauthorised arrival' clears this *prima facie* check, then they are placed in immigration detention until they are permitted to enter Australia or are deported. Many applicants are advised by smugglers to destroy passports before arrival so that they will not be deported. Whilst this prevents immediate deportation, it can create identity problems during the processing.

The other main group of people in detention are those who have overstayed their visas or breached visa conditions, such as no work conditions. They may apply for a bridging visa whilst their case is processed however it is not automatically granted.

7. Applications in Detention

An asylum seeker in detention must lodge their application with the immigration officer within three working days of indicating their intention to make an application. The Department can extend this with agreement however it is normally strictly maintained. This limit puts significant pressure on applicants and advisers. Advisers have to establish a rapport and trust in a short time as well as completing the forms and a statement.

In the processing of 'boat people' there are a number of pressures on all concerned. These include political pressures, legal and administrative pressures. In order to process the cases as rapidly as possible, the usual number of cases to be completed by a representative is at least 2-3 per day.

Applicants may then be interviewed though the immigration officer can move to a decision without interview. Interviews are conducted with qualified interpreters and in Villawood it may be through a video linkup between the detention centre and the migration officer. Boat cases are interviewed immediately after the applications are received in groups called taskforces.

If an application were accepted, then the asylum seeker will be given a health check and must complete a security clearance by ASIO. This can delay cases for long periods when identity issues are a concern. If successful, the asylum seeker becomes a 'refugee' and they are granted a visa and released into the community.

Some advocates including the Refugee Council of Australia, have promoted alternative models to the mandatory detention model. There are proposals that at least women and children ought be released from detention, as is done in Sweden. At the time of writing, the Government is considering these alternative models.

8. Asylum Seekers in the Community

Asylum seekers in the community have 45 days after their arrival in which to lodge an application. Applicants in the community must pay an application fee of \$30 at time of lodgement of their application. If they lodge the application outside the 45-day period then they will not receive permission to work whilst their case is in progress. It is not possible for people to get permission to work, even though they are suffering severe financial hardship or have children to support. A limited amount of money is available through the Australian Red Cross known as 'Asylum Seekers Assistance Scheme (ASAS)'. Applicants who lodge within the 45-day period will be granted a Bridging Visa with permission to work when their substantive visa expires. This Bridging Visa will continue until their case is completed even if it goes on appeal to the RRT.

9. Review by the Refugee Review Tribunal (RRT)

The RRT was established to provide an independent merits review in a non-adversarial process. Lawyers and migration agents have no right of appearance but are commonly allowed to appear by leave. The RRT is only in Sydney and Melbourne.

Cases in Port Hedland, Curtin, Woomera or isolated areas are often conducted through a video linkup. Advisers and interpreters are usually in Sydney or Melbourne. It is possible in special cases for advisers to have a telephone link-up in a case.

Tribunal conducts an initial review of the papers and if the member cannot make a positive decision, then an applicant is usually invited to attend a hearing. It is possible, but rare, for the RRT to seek clarification of minor points and then moving onto a favourable decision. Hearings are conducted before single members with a qualified interpreter. The hearing usually consists of the member asking questions of an applicant.

Around 10% of cases are successful on appeal to the RRT.

10. Judicial Review

Appeals to the Federal Court from a decision of the RRT must be made within 28 days of the decision. The Minister can appeal favourable decisions and has done so in cases where an important point of law is relevant.

The Federal Court has very limited jurisdiction and can only order the case to be remitted to the RRT for determination according to law. Few cases are successful before the Federal Court. Appeals from a single judge are to the Full Court and from there to the High Court by way of leave only. There is little if any legal aid for Federal Court appeals however some counsel and solicitors are prepared to take on cases on a 'spec' basis, which means no win no fee. A more common sight is to see unrepresented persons before the Court struggling to present their case to a judge.

11. Ministerial Intervention on Humanitarian Grounds

The alternative to the judicial road is to seek intervention by the Minister for Immigration on humanitarian grounds. The Minister may elect to intervene or chose not to intervene. His decision is final and there is no right of appeal to any Court.

Whilst waiting, an applicant in the community is eligible for a bridging visa but no permission to work is granted. This is to prevent 'abuse of the process' however it places considerable emotional, financial and psychological stress on applicants who believe they have a genuine case. They can get permission to work only at the stage when the Minister is actually considering the case and they are made aware of this consideration by letter.

STORIES OF ASYLUM SEEKERS IN AUSTRALIA

Lucrecia's story

'Lucrecia' (not her real name) fled Ecuador last year, leaving behind a husband and young children. She escaped kidnap by guerillas seeking information about the police anti-kidnapping unit where her husband works. She arrived in Sydney on a tourist visa and immediately applied for protection with the Department of Immigration. In the first three months after her arrival in Australia she did not have permission to work as her visitor visa was still valid. The situation surrounding her potential kidnapping and quick departure from Ecuador left her no chance to make arrangements to bring money. She is 'safe' in Sydney but is unable to afford to buy a meal or even catch buses or trains. Even paying for telephone calls is a drain on her meager resources. Even with permission to work, Lucrecia will have limited options, as she cannot speak English. She needs money to pay for food and rent. Memories of Ecuador and her experiences are often in her mind. She fears for the family she left behind but she is anxious about the uncertainty of her future in Australia.

Ali's story

'Ali' (not his real name) is an Afghan who is from an ethnic minority called Hazaras. In Afghanistan, Ali helped on his family farm and although he never had any education, the family was reasonable prosperous. Last year, the fundamentalist Taliban captured his village. The Taliban are from a different ethnic group to Ali and they do not accept his Shi'a religious practice as 'true Islam'. As a young man from an ethnic and religious minority, Ali is at great risk as he heard how the Taliban killed many young Hazara men in other villages they captured. Ali's family sold what they could and paid a smuggler to get Ali to Pakistan and away to safety. They could not afford to pay for Ali's wife and young child to go with him. The smuggler took Ali to Pakistan and then arranged for him to fly to Indonesia and board a boat for Australia. Ali has never been on a plane or a boat before and he was very afraid but did what he was told by the smuggler, as his fear of the Taliban was greater. Ali arrived on Ashmore reef in the Indian Ocean and was rescued by Australian Naval patrols. He now waits in the detention center in Western Australia while his refugee application is assessed. Ali has not been able to contact his family to tell them he is alive. If Ali's case is approved, he cannot sponsor his wife and child to Australia for at least three years. Ali worries about his family under the rule of the Taliban but he is helpless to do anything for them.

Raja's story

'Raja' (not his real name) is a young man of Tamil ethnicity from the north of Sri Lanka. His elder brother was killed in a Sri Lankan airforce raid on his village and his other brother joined the Tamil Tigers, an armed group fighting for an independent homeland for the Tamils. Raja wants to study medicine but the continuing war in Sri Lanka has seriously interrupted his studies. His family paid for him to study at a University in Colombo. One day, there was a suicide bomb attack near his University and the security forces rounded up all the young Tamils. Raja was scared what would happen because he had heard of Tamils being killed by the security forces. Raja was interrogated by the security forces who believe that he is involved in the Tamil Tigers like his brother. During the questioning, Raja was beaten with a stick and tortured. A family friend learned Raja had been arrested and paid a bribe to get him released. The friend knew an agent who could arrange for Raja to leave Sri Lanka for his safety. Raja left on a passport obtained by a bribe and arrived in Australia. He was still feeling very traumatized by his torture and is afraid to tell people what happened to him out of shame. He makes a refugee application with the help of a new friend but he does not tell about the torture as Raja is trying to forget that incident. His case is rejected and now on appeal, the RRT doubts he really was tortured because he did not explain this happened in his first application. Raja is seeing a counselor who helps him set out his full story. Raja hopes that he will be believed, as he is so afraid to return to Sri Lanka.

IV. SOCIAL AND HEALTH ISSUES FOR REFUGEES

1. Psychological Issues for Refugees

A significant number of refugee applicants are victims of torture and trauma. Their experiences can vary greatly from those who are brutally tortured; to those who have had family members tortured and are traumatized by that experience. Torture is a far too common practice throughout the world.

Several studies have been conducted to measure the psychological trauma suffered by refugees so that appropriate counseling and treatment can be provided to help these people restart their lives.

A study of asylum seekers in Australia by Uniya, the Jesuit Social Justice Centre, found that when comparing 'push' and 'pull' factors, it was the former that was a major cause for people leaving their country. Asylum seekers were asked what were their reasons for coming to Australia. The top ten reasons were all 'push factors':

- Lack of confidence in their country's political structures
- Fear of police against them or their family
- Absence of institutions offering protection or justice
- Threat to life or freedom because of their political opinion
- Breakdown in civil order leading to constant feelings of insecurity
- Attraction to greater political freedom
- Denial of rights (eg; to speak out, to a fair trial, to assemble, to education)
- Oppression by government forces
- Discrimination due to family background
- Abusive or degrading treatment by police.

Another survey of East Timorese asylum seekers was conducted by the Victorian Foundation for Survivors of Torture (VSFT). They reported a common history of repeated and prolonged exposure to violence against themselves, their family and their local community in their home country. Harassment, assault, detention and killing of family members were also reported by 50% of those surveyed. The East Timorese were found to be seriously suffering from Post Traumatic Stress Disorder (PTSD). Some of the symptoms of PTSD are recurrent and intrusive memories, poor concentration, sleep disturbance, anxiety, hyperarousal and psychosomatic symptoms. 94% of the group reported depression.

In his analysis of these studies as well as other studies, Professor Derrick Silove and Clinical psychologist Zachary Steele concluded that asylum seekers had high rates of mental stress across all the studies. The levels of PTSD 'were many times higher than those found in the general population. This means that a high percentage of asylum seekers live in a state of demoralization and fear. They suffer horrifying memories of the past which interfere with their concentration and make them anxious and withdrawn.' A factor which can cause further psychological deterioration is prolonged detention whilst awaiting the outcome of a refugee application and Silove and Steele recommended a review of the practice of mandatory detention.

There are a number of other health and social issues raised by advocates for refugees. These include problems in finding housing, education of children, medical treatment, and restrictions on work permission

2. Overview

The process can be a long and traumatic one for applicants. It places much stress on them to meet very strict time limits and operate in a bureaucratic and legal culture often unfamiliar to them. Mental health workers note that applicants can be traumatised by the process and maybe even worse off at the end than when they started, especially if in detention. Whilst it does help a few, the Government's policy focus on immigration control means that safety nets insufficient. Advocates fear that genuine cases miss out because there is such emphasis on preventing abuses.

V. THE CHRISTIAN TRADITION OF SOCIAL JUSTICE & WELCOMING THE STRANGER

Christians have a long history of working for refugees. Many groups and individuals give their time for refugees. There are many scriptural references to refugees and people forced to move. The story of the Holy Family fleeing to Egypt is a typical refugee story of escaping threatened persecution:

"After the wise men had left, an angel of the Lord appeared in a dream to Joseph and said, 'Get up, take the child and his mother and go as fast as you can to Egypt, and stay there until further notice. Herod will soon be looking for the child in order to kill him.

Joseph got up, took the child and his mother, and left that very night for Egypt; and he stayed there until the death of Herod.'" (Matt 2:13-14)

The Exodus story of the people of Israel also is a story of a refugee people. The ancient custom of welcoming the stranger is a recognition of this:

"When a stranger stays with you in your land, do him no wrong. He shall be to you as the native among you. Love him as yourself for you have been strangers in the land of Egypt." (Lev19:33-34).

In the Catholic tradition, there are many statements of Popes calling on people to support and help refugees. Pope John XXIII referred to the plight of refugees in *Peace on Earth* (1963) where he expressed the 'bitter anguish of spirit' he felt about refugees: 'There are countless thousands of such refugees at the present time, and many are the sufferings – the incredible sufferings – to which they are constantly exposed.'

The document "Refugees a challenge to solidarity" of the Pontifical Councils for Cor Unum and for the Pastoral Care of Migrants and Itinerant People contains reflections on the plight of refugees.

"The problem of refugees must be confronted at its roots, that is, at the level of the very causes of exile. The first point of reference should not be the interests of the State or national security but the human person, so that the need to live in community, a basic requirement of the very nature of human beings, will be safeguarded." (p11)

People do not willingly adopt the description of 'refugees'. Most would rather be able to return to live in their home country with their families. All too often, the refugee experience means abandoning not only a homeland but also family. In Australia, many refugees have the added stress of forced separation from their spouse and children. Despite these traumatic experiences, many refugees become loyal citizens to their new country, being eternally grateful for providing the safety that has protected them from persecution or maybe death.

Pope John Paul II has spoken out strongly for refugees in his papacy. In his statement for World Migration Day in November 1999, Pope John Paul II spoke of the conflict caused by globalisation of capital but restrictions on the movement of people:

'On the one hand, globalization accelerates flows of capital and exchanges of goods and services between people and inevitably influences human movement. Every important event that occurs in a specific part of the world tends to have repercussions on the entire planet, while the sense that all nations share a common destiny is increasing. The new generations have a growing conviction that the planet is now a 'global village', and they make friendships that transcend the differences of language or culture. Living side by side is becoming an everyday reality for many people.

At the same time, however, globalization produces new ruptures. Within the framework of a liberalism without adequate controls, the gap between the 'emerging' and the 'losing' countries is widening. The former have capital and technologies that allow them to enjoy the world's resources at will, a possibility that they do not always use with a spirit of solidarity and sharing. The latter, instead, do not have easy access to the resources needed for adequate human development, and sometimes even lack the means of subsistence; crushed by debt and torn by internal divisions, they often end up wasting their meager wealth on war."

The Pope also talks of the trauma of the refugee fleeing their country"

In many regions of the world today people live in tragic situations of instability and uncertainty. It does not come as a surprise that in such contexts the poor and the destitute make plans to escape, to seek a new land that can offer them bread, dignity and peace. This is the migration of the desperate: men and women, often young, who have no alternative than to leave their own country to venture into the unknown. Every day thousands of people take even critical risks in their attempts to escape from a life with no future. Unfortunately, the reality they find in host nations is frequently a source of further disappointment.

At the same time, States with a relative abundance tend to tighten their borders under pressure from public opinion disturbed by the inconveniences that accompany the phenomenon of immigration. Society finds itself having to deal with the 'clandestine', men and women in illegal situations, without any rights in a country that refuses to welcome them, victims of organized crime or of unscrupulous entrepreneurs."

The solution proposed by Pope John Paul II is to respect dignity and human rights:

"The Church hears the suffering cry of all who are uprooted from their own land, of families forcefully separated, of those who, in the rapid changes of our day, are unable to find a stable home anywhere. She senses the anguish of those without rights, without any security, at the mercy of every kind of exploitation, and she supports them in their unhappiness. ...

Working for the unity of the human family means being committed to the rejection of all discrimination based on race, culture or religion as contrary to God's plan. It means bearing witness to a fraternal life based on the Gospel,

which respects cultural differences and is open to sincere and trustful dialogue. It includes the advancement of everyone's right to be able to live peacefully in their own country, as well as attentive concern that in every State immigration laws be based on the recognition of fundamental human rights."

Whilst there may be people who seek to take advantage of the system for their own gain, this should not harden our approach to ensuring all people are treated with dignity and respect.

The Christian tradition of welcoming the stranger is particularly important for the refugee and asylum seeker in our midst. Welcoming refugees is a duty for all Christian communities.

Fr Mark Raper sj, former international director of the Jesuit Refugee Service, has proposed two challenges from the world of refugees for people everywhere. He wrote of this in answer to the question, 'What can Australia do to create a more just world?'

These challenges are "the challenge to learn the mechanisms of reconciliation, and second, the challenge to welcome refugees."

On reconciliation:

"Those seeking power increasingly exploit ethnic division, religious intolerance or social gaps in order to further their political ambitions. The conflicts which exclude so many people today result from this exploitation of differences. The challenge then is to overcome such differences, to refuse to be deceived or misled by them. To find the paths to reconciliation – if possible before open conflict erupts – is essential."

On welcoming refugees:

"The second challenge is forced migration itself, especially the impact of refugees. The global community is divided on this question. Rising xenophobia, closed door policies, restrictive asylum practices, the increase in detention as a deterrent, these are all ways of failing to face the reality of what is happening to people. The challenge is surely first to analyse and understand what is happening, why increasing numbers of people are forced to leave their homes. If we can understand the refugee phenomenon better, then we may respond openly and with greater justice to those who seek asylum."

These challenges of reconciliation and welcoming refugees are particularly relevant for Australians in the twenty-first century.

Refugee Organizations in Australia

In Australia, there are many organisations working with refugees. A list is provided for those wishing to make contact or offer assistance.

Australian Catholic Migrant & Refugee Office
GPO Box 2720
Canberra, ACT 2601
(02)6201 9848
projectofficer@acmro.catholic.org.au

National Council of Churches in Australia
379 Kent Street Sydney, 2000
(02) 9299 2215
www.ncca.org.au

Jesuit Refugee Service
28 Roslyn Street, Elisabeth Bay, NSW 2011
(02) 9356 3888
www.jesref.org

Mercy Refugee Service
1 Thomas Street Lewisham, NSW 2049
(02) 9564 1911
mmoore@mercy.org.au

St Vincent de Paul Society in each State and Territory Capital

Asylum Seekers Centre
38 Nobbs Street Surry Hills, NSW 2010
(02) 9361 5606

Refugee Council of Australia
(02) 9660 5300
www.refugeecouncil.org.au

Australian Red Cross in each State and Territory Capital

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Internet sites

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www.hreoc.gov.au - Human Rights and Equal Opportunity Commission
www.rrt.gov.au - Refugee Review Tribunal
www.unhcr.ch - UNHCR
www.amnesty.org - Amnesty International
www.hrw.org - Human Rights Watch (USA)
www.refugees.org - US Committee for Refugees

The Australian Catholic Social Justice Council

The Australian Catholic Social Justice Council (ACSJC) was set up by the Australian Catholic Bishops' Conference (ACBC) in 1987 as the national justice and peace agency of the Catholic Church in Australia. The Australian Catholic Bishops' Conference mandates the ACSJC to promote research, education, advocacy and action on social justice, peace and human rights, integrating them deeply into the life of the whole Catholic community in Australia, and providing a credible Catholic voice on these matters in Australian society. In this way the ACSJC seeks to bring good news to the poor, release to captives, sight to the blind and freedom to the oppressed. The ACSJC is accountable to the ACBC through the Bishops' Committee for Justice, Development and Peace.

The major responsibilities of the ACSJC are:

- Researching issues and monitoring trends in public policy and current affairs in Australia and overseas;
- Presenting Catholic Social Teaching and the social justice tradition of the Catholic Church;
- Applying Catholic Social Teaching to current social justice, human rights, development and peace issues in Australia and overseas;
- Speaking out against injustice, the abuse of human rights, poverty and violence and in favor of change for a more just society and thereby ensuring a credible national Catholic voice on these issues;
- Promoting a spirituality of justice and the integration of concern for social justice into the liturgy, worship and general life of the whole Church;
- Building social justice networks within the Catholic Church, encouraging local action, coordinating action at the national level, and maintaining contact with relevant international Catholic agencies;
- Collaborating with national and international agencies with objectives similar or complementary to those of the ACSJC;
- Witnessing to and promoting unity among Christians through ecumenical action in favour of justice and peace;
- Educating the Catholic and wider community on social justice, human rights, development and peace issues in Australia and overseas by providing guided experience and educational materials;
- Advising the Bishops on statements and actions for justice and peace

**building
social justice networks**

**researching
policy**

**educating
on issues**

**presenting
Catholic Social teaching**

**promoting
a spirituality of
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**advocating
change**

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ACSJC Background Paper: Are We Welcoming the Stranger?

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